

Service Date: September 21, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of the Application of)	TRANSPORTATION DIVISION
SHIRLEY ANN BIDDINGER DBA B.D.S. -)	
BIDDINGER'S DELIVERY SERVICE,)	DOCKET NO. T-93.66.PCN
Stevensville, Montana for a Montana)	
Intrastate Certificate of Public)	ORDER NO. 6246
Convenience and Necessity.)	

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Shirley Ann Biddinger, dba B.D.S. Biddinger's Delivery Service, appearing pro se, 138 Kootenai Creek Road, Stevensville, Montana 59870

FOR THE PROTESTANTS:

Cornelis Quist dba Merchants Delivery, appearing pro se, P.O. Box 255, Hamilton, Montana 59840

Robert F. Olsen dba Fortman Trucking Line, appearing pro se, P.O. Box 255, Hamilton, Montana 59840

FOR THE COMMISSION:

Denise Peterson, Staff Attorney and Wayne Budt, Transportation Division Administrator, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601

BEFORE:

DAVE FISHER, Commissioner & Hearing Examiner

BACKGROUND

1. On May 20, 1993 Shirley Ann Biddinger dba B.D.S. - Biddinger's Delivery Service (BDS or Applicant) filed an Application with the Montana Public Service Commission (Commission) for a Class B certificate of public convenience and necessity. Ms. Biddinger proposed to transport packages not to exceed 100 pounds each between various points and places in Missoula and Ravalli Counties.

2. After publication of the Notice of Application, the Commission received protests from Robert F. Olsen dba Fortman Truck Line (Fortman), Hamilton, Montana; Cornelis (Case) Quist dba Merchants Delivery (Merchants), Hamilton, Montana; and Dan R. Larsen dba Larsen Transport (Larsen), Seeley Lake, Montana.

3. Prior to the hearing, on August 25, 1993, Applicant filed a stipulation with Larsen to the following limitation:

Pick up and delivery will not go west of Missoula beyond the junction of Interstate 90 and Highway 200 and east of Missoula beyond Bonner, Montana.

Larsen did not appear at the hearing.

4. Commissioner Dave Fisher, hearing examiner, conducted a duly noticed public hearing on the application on August 26, 1993 at City Hall, 206 Buck, Stevensville, Montana. The Applicant and

Protestants Fortman and Merchants appeared at the hearing.

5. At the hearing Applicant and Protestant Merchants put their stipulation on the record to the following limitations:

- (1) Individual delivery vehicles not to exceed 10,000 lbs. G.V.W.;
- (2) Individual packages not to exceed 50 lbs. each;
- (3) Total maximum weight of packages per shipper not to exceed 100 lbs. per pickup.

Subject to acceptance of the stipulated limitations, Merchants withdrew its protest.

6. At the conclusion of the hearing, Applicant and Protestant Fortman stipulated to a final order.

SUMMARY OF TESTIMONY

Applicants' Witnesses

7. In support of the application, Ms. Biddinger testified that she had researched and talked to 95 percent of the Stevensville population and found a definite need for the service she was proposing. Under cross-examination she admitted that she might have to change her proposed schedules. Although difficult to forecast, she anticipates delivery for Toner Cartridge Reconditioning (TCR) 4-10 times per week. Other businesses indicated the need, variously, from 2-7 times a week.

8. Under further cross-examination, Applicant testified that she has \$10,000 to draw on for her business. She has a 1986 Toyota Tercel wagon which she will use to begin until her business builds up. She believes that her costs will be limited to gas and insurance.

9. Jim Edwards, Stevensville, Montana, appeared and testified in support of the proposed service. He is the owner/manager of BI-LO Foods, Missoula and Stevensville. He testified that he needed and would use the service between his two stores. Fortman takes care of his larger shipping needs, but the local small package service would be convenient. He expected to use it once a day.

10. Under cross-examination, Mr. Edwards testified that he is now taking packages personally or trying to catch vendors heading to either Missoula or Stevensville. This transportation has not been consistent or convenient. The smaller packages include advertising packets, "slicks," business records and like smaller items. He never had considered Fortman for the smaller items. On large items Fortman has done an excellent job, he testified.

11. Al Webster, AP Towing & Recovery, Stevensville, Montana, appeared and testified in support of the application. Mr.

Webster testified that he needed transportation of auto parts under 50 pounds, and AAA records. He is an AAA contractor which often requires quickly getting records to the Missoula office. It is not convenient for him to run these records to Missoula or to pick up records.

12. Under cross-examination, Mr. Webster testified that on occasion he uses the service of RIPS (a certified carrier not protesting or present at the hearing). He does not use UPS because it is not same day service, in fact, UPS takes two to three days normally. The items he needs transported are mostly paper work and small items. He found out about RIPS by "word of mouth," but would find it more convenient to use B.D.S. since it is local. The mail and business records for transportation between Missoula and Stevensville are confidential, he testified. Occasionally, he needs small automobile parts transported. A starter, for example, is ten pounds. He anticipates using the service two to three times a week.

13. Ray Nelson, Nelson Radiator and Machine, Stevensville, Montana, appeared and testified in support of the application. He frequently has to get radiator parts from East Missoula after 2:00 p.m. Without this proposed service he has to shut the shop down in order to have radiator parts that evening. He stated

that he did not know Fortman hauls small packages.

14. Under cross-examination, Mr. Nelson testified that he uses RIPS once in a while, but has never used Bitterroot Stage. He "has to run in the afternoon," he testified, and would use Fortman if the schedule changed and B.D.S.'s service was unavailable. The radiators weigh a maximum of 15 pounds, he testified.

15. Ginger Biddinger, owner of Sportsman's Lounge, Stevensville, Montana, appeared and testified in support of the application. She testified that she needs this service for liquor hauling between Stevensville, Victor and Missoula. She has been going to Victor herself, which is a hardship on her business. She will be needing frequent service from Missoula, when she obtains the privilege of shopping at COSTCO, she stated.

16. Dorothy Simpson, manager of Toner Cartridge Reconditioning (TCR), Florence, Montana, appeared and testified in support of the application. She testified that she has unsuccessfully tried to use other transportation service. RIPS never returns her messages on the answering machine, she testified. In May, 1992 she called Fortman and was told that if it was not dealing in 100 pound shipments, the service would not pay. She stated that TCR ships toner cartridges for laser printers. They average five pounds empty. She mostly delivers to, and needs the

service to, Missoula. Her longer distance needs are covered by UPS, which requires enormous boxes and packaging, as the cartridges are delicate. She has been hand-delivering to Missoula, but needs convenient and reliable service to do the deliveries. Her Missoula delivery needs are often emergencies, requiring immediate delivery.

17. Under cross-examination, Ms. Simpson testified that she had no idea whom she talked to when she called Fortman. She did not know that Fortman advertised small package service "customer-to-customer." She clarified that while toners are fragile and require special handling for UPS style shipping, for personal delivery in a station wagon they do not require such packaging. The key is in not dropping the cartridge. She testified that she would consider using Fortman's service now that she knew about it.

Protestant's Witness

18. Robert F. Olsen dba Fortman Truck Line, Hamilton, Montana appeared and testified in opposition to the proposed service. He testified that the application would be in direct competition with the service Fortman provides. RIPS, Bitterroot Stage, UPS and others hauling illegally have provided this small

package service as well, he testified.

19. In testifying, Mr. Olsen stated that from his six years experience in small package delivery he knew that it requires more time than people realize with Missoula traffic. The amount of money "made from the small package service" does not compensate nor is it added income because one has to haul a lot of small packages to make money, he said. He could not survive if he were "running small packages as an individual."

20. Protestant stated that he and Mr. Quist had purchased their certificates of authority from previous holders of authority, unlike the present application. He was afraid that he would not be able to make enough to meet expenses with additional competition. He also feared that someone down the road would acquire Applicant's rights, if granted, and apply for additional authority.

21. In testifying, Protestant also advised Applicant that customers want "at beck and call" convenience. When one caters to customers' every need, a carrier does not have enough time. He also testified about the expensive insurance he carries for hazardous materials and specific guidelines regulated carriers have to follow. He wished that RIPS (a regulated carrier not present) took more interest in the business. "RIPS never files a

protest," he said, noting it would be more affected than Fortman.

Looking down the road, though, granting this application could affect Fortman -- in areas such as employees and expenses. The bottom line, he asked, is how is this proposed service going to affect his rights? Will he be able to continue to provide good service if his revenues go down? Eventually, perhaps in a couple of years, Applicant will sell to someone who will expand, which is his main interest in protesting. He did not know what his revenues or expenses might be, since he had not dealt with afternoon service as proposed.

22. Under cross-examination, Protestant testified that his vehicles include large trucks and tractor trailers, as well as a small van in Missoula for Missoula deliveries. He admitted that his small package service does not enhance his pocket book and was offered as an additional service or enticement to his shippers of larger shipments. He testified that Fortman requires every pound of freight or shipments to provide the revenues to keep what it has. Yet he admitted that the small package business was marginal, operating only at a break even point. He was concerned to keep one employee working. However, according to his testimony, the employee was filling time from 10:00 a.m. to noon during slack time and not taking time away from more profit-

able work. Fortman's other operations, including interstate and intrastate, are substantial. Mr. Olsen testified that any loss caused by the proposed service would not harm the total operation.

DISCUSSION AND FINDINGS

23. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA) the Commission supervises and regulates intrastate motor carrier service. § 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority requires an application to the Commission and a hearing whenever a protest is filed or a request for a hearing is received. § 69-12-321, MCA.

24. Section 69-12-323, MCA, governs the requirements for a Commission decision on whether an application should be granted.

The Commission will issue a certificate of public convenience and necessity upon finding that the proposed service is required.

In reaching a decision, the Commission will consider existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation

service in the affected communities.

25. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation service?

26. In answering the first question (paragraph 25), the Commission finds that Applicant is fit and capable of providing the proposed service. The vehicle is deemed adequate by the shipper most in need of her service -- TCR -- which requires special handling. She has a plan to replace it when necessary and has adequate assets and line of credit to do so. She intends to provide this service as her sole line of employment 12 months of the year.

27. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-Ameri-

can Bus Lines Operation, 1 M.C.C. 190 (1936).

The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. at 203.

28. In answering the second question concerning public convenience and necessity, the Commission finds, based on the record, that the new operation or service will fulfill the public need and convenience. Testimony from five public witnesses supports a need for the service as proposed. There were also letters submitted showing community support. Applicant's witnesses testified that they need this proposed service, that it would serve their convenience not to have to make alternative arrangements to ship these small parcels, and that they had not found viable existing transportation service to meet their needs.

29. In determining whether existing carriers can and will meet the public need for the proposed service (#3, paragraph 25), the Commission finds that the proposed service will fit a unique need not met as well by existing carriers. Although Protestant Fortman does small package service, it has not been readily

convenient and available to the shipper witnesses. Its large trucks and semi-trailers do not support a cost effective small parcel service.

30. The final question in Paragraph 25 is whether the proposed service would have an adverse impact on existing transportation service. Protestant Fortman admitted that Applicant's proposed service would not harm Fortman's over-all operation. Since the small parcel service was offered primarily as a service to Fortman's larger customers, it is unlikely that this service will be adversely affected. Protestant's chief concern was speculative -- what will happen with another certificate out there if the holder applies for additional authority? The answer is that the holder will have to identify an unmet need, just as in this case. The speculation, however, does not amount to a showing of adverse effect on existing service.

31. The Commission accepts the stipulated limitations between Protestant Merchants Delivery and Applicant. Protestant Fortman requested at the conclusion of the hearing, that if the application is granted, it be subject to the stipulated limitations. The Commission finds that these limitations will minimize any possible adverse effect of the proposed service, however speculative.

32. The Commission determines that the public convenience and necessity requires the proposed service. Existing carriers cannot provide the service as well, nor will this authority adversely affect the existing transportation service. The Commission determines that the authority should be granted.

CONCLUSIONS OF LAW

33. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

34. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

35. Applicant has demonstrated a public demand or need for the proposed service.

36. Applicant has demonstrated fitness to provide the proposed service.

37. The proposed service will not have an adverse impact on existing transportation service.

ORDER

NOW THEREFORE IT IS ORDERED THAT THE APPLICATION in Docket No. T-93.66.PCN shall be GRANTED for the following authority:

Class B - Packages between all points and places within Missoula and Ravalli Counties. LIMITATIONS: (1) Individual delivery vehicles not to exceed 10,000 lbs. G.V.W.; (2) Individual packages not to exceed 50 lbs. each; (3) Total maximum weight of packages per shipper not to exceed 100 lbs. per pickup; (4) Pickup and delivery will not go (a) west of Missoula beyond the junction of Interstate 90 and Highway 200 and (b) east of Missoula beyond Bonner, Montana.

IT IS FURTHER ORDERED that the Applicant must, within thirty (30) days of the mailing of the notice of the rights herein granted comply with all rules and regulations of the Montana Public Service Commission.

Done and Dated this 16th day of September, 1993 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.